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**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION**

STATE OF CALIFORNIA, *et al.*,

Plaintiffs,

V.

DONALD J. TRUMP, *et al.*,

Defendants.

No. 4:19-cv-00872-HSG
No. 4:19-cv-00892-HSG

**NOTICE REGARDING
AUTHORIZATION OF
ADDITIONAL BORDER
BARRIER PROJECTS
PURSUANT TO 10 U.S.C. § 284**

SIERRA CLUB, *et al.*,

Plaintiffs,

V.

DONALD J. TRUMP, *et al.*,

Defendants.

1 Defendants hereby notify the Court and parties in the above-captioned cases that the
 2 Department of Defense (DoD) has authorized the funding and construction of additional border
 3 barrier projects pursuant to 10 U.S.C. § 284.

4 On January 15, 2020, the Department of Homeland Security (DHS) submitted a request to
 5 DoD for assistance in constructing 13 border barrier projects located in drug-smuggling corridors
 6 along the southern border. *See* Seventh Declaration of Kenneth Rapuano, Assistant Secretary of
 7 Defense for Homeland Defense and Global Security ¶ 3 (Exhibit 1). The request sought construction
 8 of new fencing as well as the replacement of existing vehicle barriers and dilapidated fencing, the
 9 construction of new and improvement of existing patrol roads, and the installation of lighting, all of
 10 which would be on Federal land. *Id.* The 13 requested projects consist of 38 discrete construction
 11 segments. *See id.*, Ex. A.

12 On February 13, 2020, the Secretary of Defense approved construction and funding for 31
 13 segments within the 13 project areas. *See* Seventh Rapuano Decl. ¶ 4 & Ex. B. The approved projects
 14 are summarized below:

- 15 1. **San Diego A:** 3 miles of new primary pedestrian fencing and 14 miles of replacement
 pedestrian fencing in San Diego County, CA (Segments 1–3);
- 16 2. **El Centro A:** 10 miles of new pedestrian fencing in Imperial County, CA (Segment 1);
- 17 3. **Yuma A:** 7 miles of vehicle barriers replaced with new pedestrian fencing and 9 miles of
 replacement secondary pedestrian fencing in Yuma County, AZ (Segments 1–2);
- 18 4. **Yuma B:** 0.5 miles of replacement primary pedestrian fencing and 0.5 miles of new secondary
 pedestrian fencing located in Imperial County, CA on the Quechan Reservation (Segments 1–
 2);
- 19 5. **Tucson A:** 24 miles of replacement primary pedestrian fencing, 1 mile of replacement
 secondary pedestrian fencing, and 4.5 miles of new primary pedestrian fencing in Cochise
 County, AZ (Segments 1–5);
- 20 6. **Tucson B:** 2 miles of replacement primary pedestrian fencing and 27.5 miles of new
 pedestrian fencing in Santa Cruz and Cochise Counties, AZ (Segments 1, 3–6);
- 21 7. **Tucson C:** 7 miles of replacement primary pedestrian fencing and 9 miles of new primary
 pedestrian fencing in Santa Cruz and Pima Counties, AZ (Segments 1, 3–4);

- 1 8. **El Paso A:** 20 miles of replacement primary pedestrian fencing in El Paso County, TX
 2 (Segment 1);
 3 9. **El Paso B:** 2 miles of new pedestrian fencing in Luna County, NM (Segment 6);
 4 10. **El Paso C:** 10 miles of replacement pedestrian fencing in Dōna Ana and Luna Counties, NM
 (Segments 1–2);
 5 11. **El Paso D:** 3 miles of replacement secondary pedestrian fencing and 18 miles of replacement
 primary pedestrian fencing in El Paso County, TX, and 0.5 miles of new primary pedestrian
 fencing in Dōna Ana County, NM (Segments 1–4);
 6 12. **Del Rio A:** 2 miles of replacement pedestrian fencing in Maverick County, TX (Segment 1);
 7 13. **Del Rio B:** 2 miles of replacement pedestrian fencing in Val Verde County, TX (Segment 1).

8 To fund these projects, the Secretary of Defense authorized the transfer of \$3.831 billion to
 9 the counter narcotics support line of the Drug Interdiction and Counter-Drug Activities, Defense,
 10 account. *See* Seventh Rapuano Decl. ¶ 5. The Secretary directed the transfer of funds pursuant to
 11 DoD's general transfer authority under § 8005 of the DoD Appropriations Act for Fiscal Year 2020,
 12 *see* Pub. L. No. 116-93, 133 Stat 2317, Div. A, Title VIII, and § 1001 of the National Defense
 13 Authorization Act for Fiscal Year 2020 (NDAA), *see* Pub. L. No. 116-92, 133 Stat. 1198, Title X, and
 14 DoD's special transfer authority under § 9002 of the FY20 DoD Appropriations Act and § 1520A of
 15 the FY20 NDAA. *Id.* The source accounts for the transferred funds are described in Exhibit C to
 16 the Seventh Rapuano Declaration. *Id.*

17 The U.S. Army Corps of Engineers anticipates that it will award contracts and fully obligate
 18 the necessary funds for the new § 284 projects no earlier than March 15, 2020. *See* Second Declaration
 19 of Jill Stiglich, Director of Contracting for the U.S. Army Corps of Engineers ¶ 4 (Exhibit 2). Several
 20 of the new § 284 projects are in close proximity to the prior § 284 projects approved in fiscal 2019,
 21 and the U.S. Army Corps of Engineers intends modify the existing § 284 contracts to add the new
 22 project work. *Id.* ¶ 5.a. Because the contractors working on the prior § 284 projects are already
 23 mobilized in close proximity to the new project areas, ground-disturbing activities and substantial
 24 construction may begin as soon as the contract modifications are executed, that is, no earlier than
 25 March 15, 2020. *Id.* The U.S. Army Corps of Engineers is working to determine which, if any, of the
 26 additional § 284 projects to undertake using this contract modification process. *Id.*

For the remaining § 284 projects that are not executed through the contract modification process described above, the U.S. Army Corps of Engineers intends to undertake a competitive contract award process and award task orders to qualified contractors holding a multiple award task order contract. *See* Stiglich Decl. ¶ 5.b. The U.S. Army Corps of Engineers anticipates that it will award the first of these task orders and fully obligate the necessary funds for these additional § 284 projects no earlier than April 7, 2020. *Id.* For these projects, the U.S. Army Corps of Engineers will be prepared to begin ground-disturbing activities as early as five days after task order award and substantial construction as early as ten days after task order award. *Id.*

DATE: February 13, 2020

Respectfully submitted,

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